

THE TRUE
STATE
OF THE
CASE
OF

John Butler, B.D.

A Minister of the true
Church of England:

In Answer

To the **LIBEL** of **Martha** his
sometimes **WIFE**.

Treating of a Marriage dissolved, and
made **NULL** by desertion.

AND

Of a Lawful Concubinage in a **CASE** of
Necessity: Wherein Lawful Marriage conveniently, or
possibly cannot be obtained.

*Psal. VII. IX. O let the wickedness of the wicked come to an end,
but establish the just: for the righteous God trieth the hearts
and reigns.*

*Pro. XXVIII. XXIV. Who so' robbeth his Father or his Mother,
and saith, it is no transgression; the same is the companion of
a destroyer.*

LONDON, Printed for the Author. 1697.



MVSEVM
BRITANNICVM

T O T H E
R E A D E R.

WO unto the world because of Offences,
(saith our Saviour) Mat. 18. 7. But
wo unto him especially by whom the offence
cometh. *Wo is an harsh word, and bespeaks mis-
ery, and so much the worse, out of our Saviour's
lips, because his words are never uttered in vain.
That I am charged, and that deep and widely, with
great offence, hurts me not so far as I am innocent:
But wo be to him or her who is guilty, be the cla-
mour most silent. Adultery is a foul crime, and
Fornication, a dangerous sin; and both these are
laid at my door. And the smart of this slander is so
painful and sore upon me, that I feel it wherever
I go: For many very good christians, and holy peo-
ple mourn for me I find, as if I am so indeed. And
two good men my Neighbours, and my brethren
of the Clergy, supposing me to be so indeed; most
kindly befriended me with a Brotherly reproof;
for which as I had great reason, I was very thank-
full, and returned them my thanks in an answer as
I thought meet: Unto which I had no reply. But
others more barbarously have hag'd lying reports,
and cherishing slanderous clamours, have increa-
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sed the noise. In the mean time suspecting that there were snakes in the grass, I became patient with ~~dam~~ silence, and saying to my self, that days would spake, and years would teach Wisdom. Job 32. 7. For tho much was said, and more was thought, much noise, and little musick, loud clamours, and small truth: Yet the testimony of my Conscience, concerning the sincerity of my Conversation towards God and man, administred joy and comfort to my Soul, in the midst of my wounded reputation, even as it were at the gates of death, 2 Cor. 1. 12. And yet after more than ten years waiting for a tryal of truth, I found my self rendered a publick shame, both among Clergy and Laity; being wounded at a distance by barking Curs, who keeping out of gun-shot, wounded me in the dark, so as 'twas hard to say who hurt me: While to my face all men seem'd strangers, as if nothing ill had been once thought or spoken against me. Hence was it trumpetted both in City and Countrey to the ruin of my reputation, That I am or was a man deprived and cast out of the ministry, and my benefice, for misdemeanors, and that I have two wives at once; am a whoremaster, a contentious man, a bankrupt, and a beggarly fellow, an enemy to the Government, and abundance of such like stuff, which was almost every title false. The first man who did me the kindness to say thus to my face, was Mr. William Cuffie, my fellow prisoner in the common Goal at Northampton. And verily I believe this innocent man
spake

spake as he really thought of me, being actuated by my own most disobedient, and rebellious sons, to believe such lyes, of me. And tho he spake with too much of keenness beyond what became a man of his function; having no prooffe of what he spake, but out of bare hearsay, and common fame: Yet do I freely forgive his slanders. And I do heartily thank him, that he gave me this first occasion to vindicate my self. I have reason to believe, that the ground-work of all these slanders, was laid by a more designing head, than that poor mans shouldiers were able to bear. No doubt but a Diabolical malice was at bottom of all, and at first contrived, and started those false reports, which cherished by my two rebellious sons, whereof one was a profess't Roman-Catholick, who by the principles of his religion was bound to seek all occasions he could imagine, with safety to his own person to destroy me, as one accursed by a papal decree, for a obstinate Hæretick; and for that reason I having disherited him of his Birth-right as my eldest son: He became somuch the more embittered against me: Insomuch as his mother thereupon deserted my bed, joyning issue with this rebellious and schismatical son of her delight, to divorce her self most obstinately, maliciously, and absolutely from our marriage bed, after we had lived together, much comfortably and happily for above thirty years as man and wife in holy wedlock. God is my witness how unapt I always was to harbour an ill opinion of this woman my sometimes, (as I verily thought) loving wife. For
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tho there was just suspicion of her overmuch familiarity with other men, and of her want of love to my self; because of a purloining knack she had of private selling my goods, over and above her allowance, and by keeping up a private purse; and by a coldness of affection, in case of any difference with her intimates, or kindred, being all ways apt to take party against me. But especially for that, when by meanes of adverse fortunes in the world, I was driven to lurk at some distance in remote places, for about three years space, she never was the woman that gave me one vists, during that kind of restrained exile; no, tho for near ten moneths of the said time I was a close prisoner in the Fleet: And for as many moneths before that, had not so much as once seen her face; and yet she knew well where I was, and wanted for no conveniency to come at me; and tho I often importuned her by letters, yet she would not regard me; but seemed as if pleased with my absence, and as if at that time she had begun to desert me utterly. And yet after all these things, when the storm of my troubles was over, I came home to her and abode with her as formerly, as if she had never given me any occasion of offence. And at length when she did utterly deny any further duties to me in her marriage bed; yet still I used all possible means to reclaim her, for one whole year and more, untill I found her past all hopes of reconciliation: And then I concluded with the Apostle, 1. Cor. 7. 9. That seeing I could no longer contain, it was beter to marry again,

gain than to burn, *And now it is more than eleven years since she has thus deserted me, and yet now at length she chargeth me with Adultery, or Fornication, or Incontinency, or with all. And yet I thank God for it, who by his grace hath preserved me, that I never had carnal knowledge with any man's wife, before or since I knew her, And never had a child by any woman but herself until above one year after she utterly left me. And in attestation of these things, and in vindication of my proceedings in the whole matter, I have written this ensuing treatise, in answer to her scandalous Libel. And in vindication of the Nullity of our marriage by her desertion of me, of the lawfulness of an honest Concubinage, in a case of necessity, where lawful marriage cannot conveniently, or possibly be enjoyed. Unto which discourse, I refer my readers, as to the malicious rebellions of both my sons, who were the chief incendiaries, unto all the Evil that their said mother hath acted against me. And yet I have great reason to imagin, that the green heads of these infernally inspired villains, had yet a deeper foundation then their own unripe pales to build upon. There was among my pretended intimate friends, a certain Divine of the Church of England as he pretended to be: And might a man of integrity be judged by his hat and gown, and girdle he was so cap-a-pee. Or might a man be distinguished by his graceful garb, a smooth tongue, affable discourse, and a courteous presence; he could not be otherwise. But*
when

when we approach so near a man as to find an Achitophel's head; Rabshakel's lips, and a Doegs hard heart, all met in the presence of a stubborn Jew: And a church-man's habit upon the body of a secretly resolved Papist; What can a man look for but a Beast out of a bottomless pit, throwing about his firebrands, arrows and death, and saying am not I in sport? What can a man expect otherwise, but infernally contrived mischiefs, which without the gracious help of God above cannot reasonably be prevented. I have received this sting at mine heart. And these humble papers are intended as an humble Antidote against the poison thereof: And the good God grant me his blessing therein according to my integrity. Let truth and righteousness ever flourish; but let lyes and slanders of the ungodly always be detected, and come to nought. And the good Lord of his mercy justify the innocent, and let me ever escape the malicious Plots and Contrivances, of the venomous lips of Cham, Ham. And let not the innocent and godly sons of the pure church, who have kept promise, tho to their hurt, be ensnared to believe the gilded lyes of a false brother. Amen.

The

The true
S T A T E
 OF THE
C A S E
 BETWEEN
J O H N B U T L E R, Clerk,
 A N D

Martha sometime his Wife, in a Matter of Marriage, dissolved by Desertion. As it is now about to be Controverted in the Honourable Court of Arches, by a Libel brought by the said Martha against John, and the Allegation of the said John in Answer thereto, &c.

The Libel came to the Hands of this Respondent on the tenth Day of June 1697. and says as follows.

IN Dei nomine, Amen. Coram vobis venerabili & egregio viro Georgio Oxenden, Legum Doctore almæ curiæ cantuariæ de Arcubus London: Officiali principali legitime constituto, vestro Surro. aut alio Iudice in hac parte competenti quocunque, pars discretæ femina Marthæ Butler uxoris Johannis Butler de Hammer Smith in Com: Mid: cler contra & adversus dictum Johannem Butler ejus maritum paroch. de Hammer Smith predict. ac Com: & adversus quemcunque alium sive quoscunque alios per viam querelæ ac vobis in hac parte querelando

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dicis

dicat allegat. Et in hiis Scriptis injure proponit articulationem, prout sequitur, viz.

Imprimis, That the said John Butler Clerk, and Martha Butler formerly Perkins, Daughter of one Isaac Perkins, being free from all Matrimonial Contracts, were on or about the seventh Day of May, which was in the Year of our Lord God 1651, joined together in holy Matrimony, by a Minister in holy Orders, in the Parish Church of Weedon in the County of Northampton, according to the rites and ceremonies of the Church of England; and after such their Marriage, they did live or cohabit together as lawful Man and Wife, and for, and as lawful Man and Wife, they the said John Butler and Martha, were and still are commonly accounted, reputed, and taken to be; and the said Marriage hath been consummated by carnal copulation, and he the said John Butler hath had several children born on the body of the said Martha his Wife, four of which (to wit Simon, Alban, Ann-fusan, and Barbara) are now living, and were and are commonly accounted, reputed the lawful children of them the said John and Martha Butler his Wife; and the Marriage of the said John and Martha Butler doth appear to be entred in the Register-Book kept for marriages in the Parish Church of Weedon in the County of Northampton aforesaid. Hoc que fuit Et est verum publicum notorium manifestum pariter ac famosum, ponit tamen de quolibet alio temporis spatio majori medio vel minori, Et ponit conj. Et divisim Et de quolibet.

Such is her first Article of her Libel. Unto which is answered by this Respondent, That it is not altogether True, being stult with several presumptions which cannot be prov'd, nor aptly be discovered.

And first, As to the pretended Marriage this Respondent saith, That it was really his desire, that such a marriage might have been effected as in the Libel is pretended; but in the year above mentioned it was a time of Rebellion, and of great disorders both in Church and State, and the lawful way of solemn matrimony, according to the rites and ceremonies of the Church of England was gainsaid, and utterly forbidden in those days, and forty shillings fine imposed on every Minister as should marry by the Common-Prayer Book and hence lawful Ministers in benefice durst not perform lawful marriage, under the pain of the said forty shillings forfeiture. Wherefore this Respondent being ill willing to submit

submit unto a scismatical and new invented Form of Marri-
 mony, was constrain'd to make use of a stranger that he ne-
 ver saw before nor since, who was a man out of benefice,
 and promised to marry us in due form in the Church, as in the
 Libel mentioned. And in presence of witnesses did begin to
 read the form of Marriage; but in the management, whether
 out of mistake or ignorance, or willfulness, this Respond-
 ent cannot say; but so it was, That he neglected and utter-
 ly omitted to use that most essential part of the marriage,
 whereby this Respondent should have been *betrothed to the*
said Martha the Complainant. And altho this Respondent
 did whisper and correct him by making known his mistake;
 yet he amended it not, seeming as one confounded and in an
 amazement, insomuch that the company burst out into a
 loud laughter. So as he *did not take this Respondent by the*
right Hand, nor cause him to take the said Martha by her right
Hand, and to say after him saying, [I] John take thee Martha to
my wedded Wife, to have, and to hold, from this day forward,
for better for worse, for richer for poorer, in sickness and in
health, to love and to cherish, till death us do part, according
to God's holy Ordinance, and thereto I plight thee my troth.]
 Which passage thus utterly omitted, and at that time not to
 be amended. Something was said of making us Man and
 Wife without it. And considering the rudeness of those times,
 and the difficulty of Marriage to be rightly obtained as the
 case stood: This Respondent observing that the place was
 thin of witnesses; and those who were present not so suffici-
 ently read as to apprehend the deficiency, past over the mat-
 ter with silence, and did cohabit with the said *Martha* as his
 lawful wife; whence followed a common repute, That the
 said *Martha* was his wife lawfully married to him, and he
 had carnal copulation with her as with a wife, and did
 heartily love her, and owned her as his wife for many
 years, notwithstanding the defects in the solemnity of his mar-
 riage. And did humbly conceive as those times were managed
 That he was as well married by taking a woman into his
 bed without other ceremony, as if he had been married by
 the *Directory* then in use, or by the Justices; Forms of mar-
 riage utterly illegal, tho' countenanced by the Rebellion.
 And since by the Act of Indemnity in the Reign of King
Charles the II. this Respondent humbly conceives his defici-

ent marriage is become as legal and good in law, as if it had been most truly solemnised. And he doth heartily consent hereby that she was his lawful wife, and that this Respondent had never denied her had not she cast off him.

2ly As to the *Marriage entered in the Register-book kept for Marriages at Weedon aforesaid*, as is alleged. This Respondent doth farther say, That he hath seen such a pretended marriage entered in the said book, but withall, he utterly denies that it was lawfully and orderly Registered, either by the Minister that pretended to celebrate the Marriage, or by the Minister of that Church, or by the Clerk of the Parish: but was put in by some stealth, or hired to be done many years after: For that about five or six years after the pretended time of marriage, at what time the strange Minister that essayed to marry us was dead, this Respondent did purposely call for the said Register-Book, and did plainly see and find that no such Entrance was made, but afterwards upon a new search he plainly found that there was such a marriage set down; but then it was so as that it was plainly interlined, and written with a strange hand, diverse from all the rest that were recorded therein.

3ly. As to the Children which were had of the body of the said *Martha* the Complainant; this Respondent doth farther say, That out of his abundant love to the said *Martha* his pretended wife, he never doubted to own at all times the children by her brought forth, as his own natural and well begotten children; and doubts not but that all or most of them which are dead, were lawfully and well born, and likewise that the two surviving daughters were so. And altho' there have bin suspicious carriages sufficient to provoke Jealousies, and giving just cause to recriminate the Libellatrice, and something thereof is mentioned in this Respondent's Alligation put into Court: Yet in this publick Discourse this Respondent is willingly silent. Only as to the two Sons in the Libel mentioned, called *Simon* and *Alban Butler*; such has been their undutiful, disobedient, most abominably malicious, and Diabolically rebellious carriage towards a pretended Father, that no rational man can imagine, that truly natural and lawfully born children, can possibly degenerate so far as to be guilty of such monstrous language, and *Infernal actions* as these pretended sons have been guilty off against this Respon-

pondent. All neighbours can testify that this Respondent hath done his utmost duty by them, as a tender Father, to spare for no cost to his utmost ability, in contributing to their health and learning, and all holy nurture in the Lord. The youngest has enjoy'd a fair portion under him, and might have been settled as heir of all that this Respondent is like to leave behind him, had he not burst out into inhuman rebellions and base ingratitude. The eldest had several years in his hands the management of this Respondent's whole estate, and did get or might have gotten a sufficient portion under him, until first running into intollerable debaucheries, and at last becoming a profest *Roman-Catholick* he caused himself to be discarded. The younger owes this Respondent at this Day 150 *l.* upon Account, and yet pretends by a kind of a cheat that he owes nothing. Both of them have used violence against this their pretended aged Father, have thrown him down by violence in his own house and rifled him; have cheated him, robbed him, slandered, reproached, reviled and upbraided him at a strange rate, in presence of the Complainant *Martha* their Mother, who in many things was their Abettor: They have threatened him with sword in hand, swaggering over him in strange presumptuous postures: They have used all possible means to impoverish him, to ruin him, and to starve him, by abetting eneinies to overthrow him, and have occasioned his imprisonment. And at this day by compliance with an horrid *Extortioner* that has a mortgage upon his inheritance, these sons together with the Complainant their Mother, are very unjustly in possession of the inheritance of this Respondent who is constrained to sue in Equity to gain his bread out of their rapacious teeth, while they use all possible means in these hard times, playing upon his wants to rob him of all he has, in order by Law to disable him from using a just defence: These humble complaints this poor Respondent hath uttered in the bitterness of his soul; upon the *Words of a Priest*, and of such a Priest as *has kept his Oaths and Promises to his hurt*; and God knows, who knows the secrets of all hearts, that he hath uttered no lie. And all who know him do know, and he presumes will testify to the integrity of his reputation. It is written *Deut. 27. 16. Cursed be he that setteth light by his Father or Mother: It is God Almighty hath said it,* and all
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the world are bound to say, Amen to it. Is this Respondent Father to these Brats? If so, How much good would their repentance avail him beyond their ruin? But he leaves them as to that matter to God the avenger, who knows all things. The same great God has determined it, Chap. 21. 21. *That such wretches are to be Ston'd to death with stones, that all Israel may hear and fear, and that no more such Presumption may be done again.* And the Father alone in this Case is to be the Witness. But alas! as times go, rude villains find more friends than innocent parents: God save all according to his just vengeance, Amen. But what shall be said? Are these children ill born Bastards? God knows! And if so, the fault is elsewhere, rather than with this Respondent. However they are plainly the Devils Brats, and none of God's Children according to the sense of the Apostle. 1 John 3. 10, 11, 12. And thus they are *Bastards of ungodliness*, and the *discreet Woman* their Mother, as the *Libel* styles her, by taking share in their rebellions, cannot be thought so very faithful as is pretended. And now come we to the 3^d. Article, which says,

Item, *That about 12, 11 or at least 10 Years since, one Mary Tomkins did live in the House with them the said John and Martha Butler as their Servant, and the said John Butler being unmindful of his conjugal vow, and seduced and instigated by the Devil, did about ten Years since commit the foul crime of Adultery, Fornication, or Incontinency with the said Mary Tomkins, his said Maid Servant, and it being taken notice of that she was with child by the said John Butler her Master, he the said John Butler and the said Mary Tomkins went into Holland or some other partes beyond the Seas, where they lived incontinently together for the space of two years or thereabouts, and the said Mary Tomkins had there a Bastard child born, and begot by the said John Butler, called by the Name of Mary, and for and as the base child begotten by the said John Butler, on the body of the said Mary Tomkins, the said child Mary was and is commonly accounted and reputed, and thereof there was a publick Voice, Fame and Report. Ponit tamen de quolibet alio tempore spatio, &c. Et ponit ut supra.*

Such is her second Article; whereof her first charge therein is, *That one Mary Tomkins was a servant in the House of this Respondent*; which be it true, yet what matters it to her purpose? Except it be to call this Respondent to remembrance, how

how that this Complainant before her pretended Marriage with this Respondent, was her self no better but a meer Maid-Servant in the house of his Grand-mother in Law, who was then called *Martha* or *Mat*, and being sent out by her Mistress to wash Daglocks, or the besould locks of the sheeps tails, at a brook running by an open high-way side, at which time this Respondent out of tender love griev'd at her disparagement, gave a groat to a poor woman to wash in her stead, that she might be excused and she was so: She ought not therefore to have envy'd, that he who had so much love for her self a Maid-servant, had some lawful kindness also for another of the same degree.

24. To her second Charge, *That this Respondent as one unmindful of his conjugal vow, and seduced and instigated by the Devil, did about ten years since commit the foul crime of Adultery with the said Mary Tompkins his maid-Servant.* This Respondent farther saith, That this is a pernicious and slanderous lye, invented by the Complainant *Martha* her self at the insinuation and instigation of the Devil, and her foul mouth'd sons. For as for mater of Adultery, it is a thing utterly inconsistent with her own charge. For the said *Mary Tompkins* being no man's wife, but a maid-servant, as her own self avers, and the said Respondent being no woman's husband as she also her self must needs know, unless of the said *Mary Tompkins*; with what face of impudence could she call it *Adultery*, had such a thing been done as she alleges? For the Complainant her self has so often confest it that it is out of her power to deny it, how that above one year before, that *ten years since*, wherein she charges this Adultery to be done, she had clearly Divorced her self from this Respondent's bed by a malicious and obstinate Desertion, having utterly dissolv'd all bonds of wedlock between this Respondent and her self by her own Authority, by breaking her conjugal vows in willfully denying the Duties of Marriage required in holy Writ. And yet farther to satisfy all the world how unjustly this Respondent is charged with this foul crime, he does hereby solemnly protest and declare, and does hereby offer himself before this Honourable or any other Court, to take his Compurgatory Oath, *That he never had to do in a carnal manner with any Man's Wife breathing.* And that he never did deny Marriage Duty to the said Complainant his
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pretended wife, while she was his wife, and that he had no Hand of contrivance in putting her away from him, but that the separation which was made was perfectly and purely her own act, in a free pernicious and obstinate refusal of her Marriage Duty.

3ly. As to the *Fornication* and *Incontinency*, wherewith this Respondent is charged; he farther saith, 1st as to *Fornication*, which is an heinous sin, whereby a man is guilty of carnal knowledge or uncleanness with any *Woman*, forbidden by *God's Law*, or by excess of carnal usage with his wife or any other lawful woman: He saith as to the last, he cannot deny but that he hath been guilty, and the first and greatest act of *Fornication* that his Conscience can charge against him was with this *Complainant* Martha while she was his wife. And that as for any other matter of *Fornication* this Respondent doth heartily protest in the presence of God, and is ready to take a Compurgatory Oath upon the same, at what time soever it shall be lawfully required, that during all the time before and after the day of his pretended Marriage with this *Complainant* about the Year 1651, unto one whole year and more after the time of *Dissolution* of the said Marriage, by means of the willful, obstinate and malicious *Desertion* of this *Complainant*, he never had child by any other woman besides the *Complainant* her self, and never in all that space went unto any common whore. And tho this *Complainant* and her two ungracious sons, have often upbraided, slandered, and reviled this Respondent, with most abusive rallies, and have filled the country with many slanders and suspicious reports of matters said or done above twenty or thirty years since, concerning what kindness this Respondent might have shewn to particular persons more than ordinary; this Respondent doth solemnly protest and declare that he never had carnal Knowledge of any such woman, for whose sake he was aspersed, nor did he ever attempt or desire such a thing of any one of them so spoken off. And as for the said *Mary Tomkins*, this Respondent farther saith, That until utterly relinquished by his wife, and above one whole year after, she never had any child by him, nor was she with child by him: And after that time he was guilty of no other nor greater *Fornication* with her, than what our holy Father *Abraham* the Father of the faithful was guilty of, when

when purely for issue sake, and not of any lustful concupiscence, he went in to *Hagar his Wives Maid*, or unto *Ketarah* his concubine in the life time of *Sarah his Wife*. Now *Abraham* was not charged with any thing of *Fornication* in that case, but rather was acquitted by God Almighty as purely and truly Innocent, altho' he had done the very self same thing which this naughty woman chargereth against this Respondent for *Adultery* or *Fornication*; but the case of this Respondent is much easier than that of *Abraham*, forasmuch as at the time aforelaid *Abraham* had a wife then in his bed with him; but this Respondent had no wife, unless it may be esteemed that the said *Mary Tomkins* was his lawful and his only wife, according to the sense of holy writ.

Lastly, as for *Incontinency*, which in its self is no sin, unless it be expressed in unlawful uses. This Respondent doth confels and allege, that he is one of those men, of whom our Saviour hath declared, saying, *all Men cannot receive this Saying, Mat. 19, 10.* And of whom St. Paul hath declared, Saying, *They who cannot contain, let them marry, for it is better to marry than to burn. 1. Cor. 7, 9.* Now this Respondent being not naturally endowed with the gift of *Continency* from heaven, had license by God's Law to marry. And being married his wife denied him *her conjugal duty*; that is, she did obstinately deny him the use of her marriage bed. In this case what should this Respondent do? To go in unto a Whore, he might not do. And to marry another wife, without a lawful license from lawful Authority, it was not convenient because of a statute, law in force, that under a severe penalty, no man might have two wives. And tho in the truth of this case, it was not having of two wives, for that the marriage with the first was of course dissolved: Yet being under Judicature of others, who might censure according to their own sense; there was danger of being pinched by the Judge, tho not by the law, and therefore it was an hazardous case. And in those days wherein this *Desertion* was made, Popery had possessed the supream Seat, and there were *high Commissioners* superseeding all other courts in power, who acting in favour of persons Popishly enclined: No sentence could reasonably be expected according to the Justice of holy writ, wherein the *Popish Doctrins* clashed with the sense of the

Reformed Church; they holding marriage indissoluble, as one of their *seven Sacraments*, without a *Dispensation* from the *Pope*: And these allowing a clear Dissolution thereof, in case of a *Desertion*, according to the Doctrine of *St. Paul*, in *1 Cor. 7, 15*. In this Case therefore a Man's own *Conscience* was a good Judge in the case, at least until contrary matters could be proved before a competent Judge. And the testimony of holy writ was a sufficient law for *Conscience* to be guided by, and this without the assistance of being backed by Authority, in a case where an *Authoritative sentence* could not be had: As it was in *St. Pauls* time, wherein the Magistracy being altogether *Paganish*, no such sentence was required as needful. And as in the *Marquess of Vicinis Case*, wherein the supreme Authority being *Popish* he married again with out such a sentence. 'Tis true indeed he had a sentence by Authority from the *Syndick of Geneva*: But that was as much as just nothing, for that first that *Syndick* had no Authority to summon his wife to appear at their court, she being not under their Jurisdiction: And secondly being a Lay-Power, set up of their own accord, without power from God, or his word, had not so much power as the one conscience of the *Marquess* himself. And now as the case stands, this *Repondent* humbly presumes, that the honourable *Court of Arches*, cannot and will not judicially reprove him, who hath acted nothing, but what is agreeable to holy writ, and a good conscience; and humbly prays that this Pernicious *Complainant* may be called in to swear this *Alligation of this Complainant*, and forasmuch as these secret dealings of the marriage bed being difficult and doubtful to be made plain by eye witnesses, that the said *Complainant* may be required to *answere upon her oath*; unto the charge of this *Repondent* whether or no she hath not thus castelessly, maliciously and obstinately denyed unto him this *Repondent* her conjugal duties, and that tho she was often intreated to the contrary, and all possible means were used, and that for above a twelve-moneth, to wit, from the *12th of July 1686*, unto the moneth of *September 1687*, but she would not yield unto him. And this in trust that upon her just confession and due proof hereof made, this *Repondent* may by lawful Sentence of the said honourable Court, be declared quit and free, and fully dissolved from all bands of marriage with this *Complainant* the said malicious

ous Desertrice ; in order that he may lawfully confirm that lawful marriage, which in part he hath entered into with another woman. For this *Respondent* humbly conceives that his first marriage (with the *Complainant* being by her default absolutely dissolved, and it being utterly unlawful for him to go in unto a whore, that necessity required him who could not contain, and conveniently could not marry with safety, to take another woman as he did, after the manner of the faithful, and *Holy Abraham*, for issue's sake, and to marry her, as well as reasonably could be done. And whereas this *Respondent* has thus compurg'd himself, by his protestation of Innocency, and his readings to make oath of the same, and there appearing none the least clear proof to the contrary ; he humbly expects and hopes, that notwithstanding this impudent slander of this wicked woman the *Complainant* his pretended wife, against him, this honourable Court, and together therewith, the whole World will pronounce and think him clearly Innocent ; and that not only from the foul crime of *Adultery*, but also from the heinous Sin of *Fornication* ; and from all unlawful *Incontinency*. But before this *Respondent* concludes his full and perfect answer to this second Article of the Libel: He humbly thinks himself concerned, as he is a Divine in holy Priestly orders, to argue for the better satisfaction of this Honourable Court, and of all persons, Clergy and Laity, unto whose ear this Case may perhaps arrive ; what is to be done, in this case of desertion, and what ought lawfully to be done in all respects. And that according to the Judgement of the ablest and best Divines, in all Christendom, and according to the *Civil*, and *Canon Laws* in these times of Reformation.

And first as to the true State of the Case of *Desertion*, whether made by the Man or the Wife.

St. Paul saith, 1. Cor. 7. 15. If the Unbelieving depart, let him depart ; a Brother or a Sister is not under bondage in such a case : But God hath called us to Peace.

Next, *Mr. John Diodati of Geneva, in his Annotations upon the place, writes thus ; 1. Depart, i. e. be Divorced for hatred to the Religion, or Marrieth another : Or that all possible and reasonable remedies having been used, and a convenient*

time allotted for that purpose, the Unbelieving party cannot be induced to a due conjunction. A brother, namely the believing party, is loosed from the Bond, being thus forsaken by the unbelieving Party.

Simply, Adultery, and malicious Desertion, do dissolve Marriage. Either of them do make a Divorce.

servituti subjectus Frater aut soror in hujusmodi casibus.

Divorce is a lawful dissolution of the bonds of Marriage.

The causes of it are two only; Adultery and Desertion. That is a malicious departure of one party from the other, either of hatred to Religion, or out of Levity or impatience of the restraints of marriage, or of any other unlawful Cause; refusing to perform marriage duties.

Inter has causas ea est differentia, quod Adulterium sit propria atque unica causa dimittendi conjugem adulterantem, atq;

In Adultery the innocent Husband dismisses his Adulterate wife. But in Desertion the innocent Husband is passive, being deserted of his wife who leaves his bed.

Johannes Wollebius, Dr. Theologiæ in Acad. Basil. in compendio Theologiæ, Cap. XI. Fol. 245. [Scribit ut sequitur.] viz. *Simpliciter conjugio repugnant Adulterium & malitiosa Desertio Utrumque istorum parit divortium. [De desertione dicit.] 1 Cor. 7. 15. At si infidelis sese separet separatus esto, non est servituti subjectus*

Amandus Polanus a Polansdorf Syntagma Theologiæ Christiana, Lib. X. Cap. 55. De Divortio conjugum. Scribit. ut sequitur, viz.

Divortium est legitima conjugii solutio.

Cause divortii due sunt tantum: una Adulterium, altera Desertio, id est malitiosa alterius conjugis discessio, nulla justa causa, sed vel odio vere religionis propter quam cum conjuge habitare recusat vel levitate, vel injusta patientia fræni conjugalis, vel aliis non justis, & sufficientibus causis, 1 Cor. 7. 15.

hatred to Religion, or out of Levity or impatience of the restraints of marriage, or of any other unlawful Cause; refusing to perform marriage duties.

in eo casu proprie conjunx innocens divortium facit, ac proinde aliquid agit, conjuge dimittendo. In Desertione autem malitiosa & pertinaci conjunx innocens non agit, sed patitur, aliud enim est dimittere conjugem Adulterantem, aliud a conjuge ultro Discedente dimitti & deserui namqui a conjuge ex destinata malitia discedente deseritur, is patitur & non agit, non dimittit conjugem, sed animo retinet, & retinere cupit. Qua propter is maritus non potest dici fecisse divortium contra christi verbum, quod, Mar. 5. 32. & Cap.

19. 9. extat, qui injuriam hanc ab infideli patitur; & qui manet in vocatione sua quantum in ipso est, licet parte altera discedente. In procedendo, si non procedit reconciliatio, pars innocens non potest cogi ut recipiat ream.

Sed si persona accusans honeste vixit, & petit ferri sententiam. Pronunciatur hoc modo: Cum persona quæ deliquit suo scelere dissolverit conjugium, iudex auctoritate Evangelii personam innocentem pronunciat esse liberam, & expresse ei concedit, ut pro sua conscientia pie contrahat aliud conjugium. But having lived honestly, the Judge ought to pronounce him quit of the first marriage, with free liberty to marry again.

Wolfgangus Musculus Dusanus in Commen. in Mat. Evangel. Cap. v.

Necesse est ut certas causas statuamus ob quas liceat usurpare Divortium etiam coram Deo, salva conscientia & pacata. means wherof with a safe and quiet conscience a man may marry again; of this kind are two, Diverce of Adultry and Desertion.

In the process, if no reconciliation be made before, the innocent ought not to be compelled to receive the

guilty. the Judge ought to pronounce him quit of the first marriage, with free liberty to marry again.

We must shew the certain cause of Diverce by

Hujus generis geminam invenio culpam per quam solvatur matrimonii vinculum. Una est quam dominus hic ponit, dicens nisi causa stupri, &c. Altera est, quam Apostolus assignat, 1 Cor. 7. 15. Cum dicit quod si incredulus discedit, descendet.

Non est servituti subjectus frater aut soror in hujusmodi casu. Si infidelis cohabitare nolit aut reliqua conjugii jura Religionis causa recusavit. His inquit Apostolus servituti non est Subjectus. Quod ergo Christus non dicit, quisquis deseritur ab uxore sua quavis de causa & aliam ducit mechatur: sed quisquis repudiaverit uxorem suam quavis de causa, nihil ad eum pertinet; a quo uxor non dimittitur, nec ejicitur, sed illa sese ultro perfida separat, & discedit, mariti fidem obnoxium sibi jam amplius non habet,

Christ, does not say he who is deserted of his wife and marries again commits Adultry. But he who dismisses his wife does so; for she unfaithfully Divorceth her self, and therefore deserves no more

Faith from her innocent Husband.

Ambrosius apud Musculum in eod. loco.

Locum hunc exponens Ambrosius dicit non debetur re-

St. Ambrose is positive, that who ever relinquisheth her Husband, has utterly dissolved the bonds of Matrimony, & that the relinquished Sins not in marrying another.

Guilielmus Bucanus S. S. Theologiæ in Acad. Lausannensi Doctissimus Professor in Institutis Theologiæ, seu Loc. Com. Christianæ religionis.

A perfect Marriage may be two ways dissolved. I when by Law it is in its self null or declared so to be.

II. When for lawful causes it is made null.

§. XII. Anigitur possunt Legitimis conjugia dirimi ?

Our Saviour's sense in Mat. 19. 8, 9. with St. Paul in 1 Cor. 7. 15, may be thus reconciled.

Christ treateth of one unjustly dismissing his wife, according to the question asked. St. Paul teacheth of one unjustly dismissed of his wife, in answer to the Question ask't him in case of an Infidel wife deserting : Whether a believing husband be so strictly tied up, that he cannot mar-

reverentia conjugii ei, qui horret auctorem conjugii. Non est enim ratum Matrimonium quod sine dei devotione est. Ac per hoc non est peccatum ei, qui dimittitur propter deum, si alii se junxerit. Contumelia enim Creatoris solvit jus matrimonii circa eum qui relinquitur, ne accusetur alii copulatus.

Locus XIII. §. v. Quot modis Consumptum Conjugium dirimitur ? Duobus modis. I Cum id quod per se, & jure nullum est, pro nullo habetur, vel ipso jure nullum esse declaratur.

2. Cum conjugium quod ratum fuit & confirmatum, dirimitur legitimis de causis.

Posse, justis de causis, Deut. 24. 1. Et ex ipsius Christi verbis, Mat. 19. 8, 9.

§. XIX. [Qua ratione cum Christo est Reconciliandus Paulus qui 1 Cor. 7. 15. propter Desertionem divortium fieri possit, statuis inquit, &c.]

Christus loquitur de faciente divortium, seu de eo qui dimittit injuste, de quo tantum interrogatus fuit. Paulus vero de patiente, seu de eo qui injuste dimittitur ; qui interrogatus, an si infidelis fidelem deseret, fidelis teneretur sic astrictus infideli, ut ad secundas nuptias transire non posset ? Respondet si infidelis discedat, personam desertam a servitute, id est a vinculo conjugii liberam esse, post quam scilicet omnia expertus fuerit, ut infidelem discedentem revocet ad officium. Ita, quam Christus ostendit causam divortii faciendi ; Paulus vero causam divortii patiendi, & liberationem obtinendi propter desertionem.

ry another Wife? To which he answer's, That after all lawful means used to reclaim her, he may marry another wife.

§. XX. [Qualem intelligit Paulus Desertionem?]

Hinc est quod magni nominis Theologi infidelitatem illam de qua loquitur Paulus, revocent ad genus, videlicet ad quamlibet malitiosam injustam & pertinacem discessionem, & desertionem; juxta illud, 1 Tim. 5. 8. [Qui suorum, maxime autem domesticorum curam non habet, fidem abnegavit, & infideli deterior est.] Et videtur etiam idem Apostolus cum dicit [non est servituti subjectus frater aut soror in ejus modi] paria peccata intelligere.

§. XXIX. [Quid si magistratus officium negligat?]

Valeat perceptum Apostolicum ad Titum.

3. 10. [Hereticum hominem, ergo & Atheum, Apostatum, & Blasphemum post unam & alteram correctionem devota.] Et dictum Christi Luk. 14. 26. [si quis venit ad me, & non odit patrem suum & matrem, & uxorem, &c. non est me dignus.] Et Mat. 18. 9. [Si oculus tuus scandalizat te erus eum.] Item, [Omnis qui reliquerit agrum, domum vel uxorem, &c. Centuplum accipiet, Mat. 19. 29.]

freely as he may reject an Heretick after once and twice admonition. Tit. 3. 10.

Stephanus Szegedinus Panonius in Theol. Sinceræ locis Com. Tab. XI. De divortio scribit & de absentia conjugis.

[Quid de voluntaria & affectata absentia statuendum?]

Respondet Talis absentia pro desertione habenda est: Et est malitiosa.

This Author says, That an affected voluntary absence of either party is to be taken for a malicious Desertion.

Tria trium clarorum virorum memorabilia dicta.

Petri Mellii. In casu Criminis pro quo lex Dei hominem interfeci jubet, divortium permitti potest: Si aliter reconciliatio inter conjugales stabiliri neutiquam possit.

Stephanus Szegedini. Ibi inter volentes Matrimonium solvi potest, ubi fines omnes conjugii impediti, ac sublatis sunt preter adjutorium, quod etiam mendicis ipsis debetur.

Alberti Bakonii, melius est disitos Angelice, quam conjuncto Dia-

And the same learned Author says, that by an Infidel, St. Paul means every one who is a malicious and causeless desertrice; according to St. Pauls sence in 1 Tim. 5. 8.

And he farther saith, that if the Magistrate neglect his Office; the innocent party is free to marry another Woman without his Sentence; and to reject his Infidel Wife, as

And that the unbeliever deserting, does absolutely dissolve the bonds of Marriage.

Diabolice vivere: etiam eos quibus nulla ratio ad perpetuum suppetit divortium, & earatione pax magis colatur.

Tab. III. *Si Infidelis fidelem conjugem Relig. causa repudiat: fratrem vel Sororem, liberat. a conjugii vinculo pertale repudium.*

Such (as by these Quotations does appear) are the Doctrines of all the most learned Divines of the *Reformed Religion* beyond seas, whether *Lutherans* or *Calvinists*. And our *English Divines* do agree with them therein. Thus the learned Dr. *Hammond* in his Annotations upon, 1 Cor. 7. 15. And so the *Assembly of Divines* upon the same; only as to marrying again after *Desertion* they do not so largely express their sense, as these others have done. Yet in his practical Catechism, the Doctor allows clearly *Marrying again in case of malicious Desertion*. Book 2. § 7. And so *Nicholas Bifield* upon 1 Pet' 3. 7. Also the learned *Perkins*, and divers others. Now as for the learning of the *Civil Law*, this Respondent cannot pretend to be so generally experienced: Yet in confidence, that *Reformed Civilians* do agree with our Divines, He shall only introduce one Quotation out of a very learned Doctor of the *Laws*, and of the Church and Kingdom of *Denmark*, *Melchior Kling* in his *Learned readings upon the four Books of Institutions of Law, by the Emperuor Justinian*, imprinted at *Leyden* in the year 1582. and Dedicated unto *Christian K. of Denmark*, which speaks as follows;

This Learned Author shews, That the Law of the new Testament takes place before all Canon and Civil

Lib. I. Tit. X. denuptiis Fol. 32, Num.

1. *Jus novi testamenti habetur in eo quot ad divortia attinet. Enumerantur enim due cause divortii, Prima est Adul. de quo Mat. 19. secun. est si alter ex contrahentibus infidelis fuerit, & noluerit habitare cum fidele, sed discesserit permisum est fidele iterum nubere, 1 Cor. 7.* laws, and that by Authority of the new Testament without doubt. After Desertion the deserted is so free from the marriage with the Desertrice, that he may take another wife.

Fol. 33. Numb. 5. *Certum est quod jus novi Testamenti Canonibus non cedit: igitur jus novi Testamenti, in casibus in eo decisus simpliciter sine aliqua mutatione sive limitatione servandum sit. Et in hoc casu sine dubio pugnat jus canonicum cum jure novi Testamenti in multis. Item Utrum sola desertio conjugis*

jugis sine Adulterio sit causa divortii, & utum post divortium innocentē liceat, altera parte vivente contrahere matrimonium? sed de his questionibus infra decemus.

Fol. 54. Numb. 5. *De divortio. Aut querās utrum Matrimonium propter Hæresim vel talem errorem, in totum possit dissolvi ita quod fidelis, altera vivente, habeat transitum ad secundas nuptias & hoc casu sine dubio, fidelis potest nubere.*

Now according to the sense of all these learned Divines, both at home and abroad; and the sense of the civil Laws, which as it shall seem by this one learned Doctor does agree with them in the same sense: It does appear that in case of a Desertion made by the wife, the marriage with that wife is clearly dissolved, she having divorced her self from her Husbands Bed; or rather as our *English* Divines term it, she hath clearly made Null and Void, by that act of Desertion that marriage which was between her self and her Husband: And that so, as by the holy word of God, the marriage is declared Null and Void in its self without any farther sentence of the Magistrate. For thus saith the Text, If she will depart, let her go; there needs no sentence of the Magistrate in the case, especially where on, Magistrate can be had in the case, or in a case where the Magistrate either will not Act, or at least will not make sentence, as the holy word requireth. For so saith the most Learned *Bucanus*; in such a Case after convenient admonition, and means used to reclaim such a Desertrice, and she will not be reclaimed: A good Husband may as freely and safely reject her Sociery, so as never more to have to do with her, as he may reject an *Heretick*, so as never more to have to do with him, because he an is *Heretick*; and this he may do without any sentence or leave had of the Magistrate. *Tit. 3. 10.* Nevertheless for the conveniency, and the well-being sake of the Case, the sentence of the Magistrate is thought meet to be procured, were it for nothing else, but to abide as a sure test that all matters in the case were rightly and truly acted. For otherwise the Desertrice, may return again, be it only to despight her wronged Husband, and denying the Desertion, may claim her old right anew. And besides there may be controversies about allowance of Maintenance, all which by a just sentence may at once be stopped. Now this *Respondent* allegeth, that in his

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case,

case with his deterring wife, there was no Authority but what at the highest was *Popish*, that he could any way appeal unto; and the ground of the *Desertion* being chiefly and only for dis inheriting his eldest son, who had left his Father's religion to become a *Roman-Cathelick*; he could expect no remedy but what would be superseded by the High-Commissioners, from whom he could expect no right done him against the concern and interest of *Popery*. 'Tis true indeed, that it was alleged, as if this *Respondent* should say, that he had another woman with child by him, at that time, for which cause his wife the *Complainant* pretended to have relinquished him: And she alleges she can prove such words uttered by him. Unto which he answer's, that true it is he was in a great passion, because of his son turn'd Papist, and his wife violently siding with him, to excuse and justify him against this *Respondent*: And what words in the heat of passion were uttered by him, he does not perfectly remember; it is a matter on her part to be proved. But if some such like words dropt from him, he might be mistaken by the hearers, and misunderstood, or was it true that he said for be sure it was not true that he said; and he is ready to make oath thereof when ever called there to, that there was no such thing done, at that time, nor ever before, nor of a bove a twelve moneth after, and there is no track, or appearance, or testimony can be made of any such thing done as is pretended. But for a twelve-moneth after her desertion begun, he did continually solicit her to be reclaimed, and she would not, tho no sign nor token appeared, or was ever heard on, in all that time, of any Woman with Child by him. But this *Respondent* is able to make proof, by several suspicious tokens of her unfaithfulness, and by her taking part with her kindred and acquaintance against him, and by secret parloynings made of his goods, besides a constant allowance alwayes made her; and by her affected and voluntary absence from him for a whole year and half together, and by continual and causeless quarrels against him, that it was a causeless contrived malicious and obstinate Desertion made against him, propagated and encouraged by her rebellious children. And now besides all these things it is now above eleven years since her Desertion first begun, and yet in all this time she hath made no complaint.

More-

Moreover this *Respondent* hath several times offered her to refer all matters in Difference with her, and offering to be concluded by reverend and holy Fathers in God the Bishops; and particularly by the late Bishop of *Bath and Wells*, unto whom she was contented to refer her self, and yet afterwards would not stand to it, nor to any other Bishop, until at this time, knowing this *Respondent* to be utterly destitute of maintenance, she sued out Process in this Honourable Court, verily thinking to destroy this *Respondent*, and to tread on him in his distress. And this notwithstanding he has been hereto so kind to her, as to allow her maintenance all these years of his free good will, without any condition, until of late by means of false friends and mishaps of fortune, he wanted daily bread for his own relief, and could not allow her for want of wherewithall.

And now having answered her scandalous Charge, this *Respondent* is ready to proceed to the matter of Fact. And farther saith, that the said *Mary Tomkins* together with this *Respondent*, and other Company, did go over into *Holland*, upon a very lawful and good Account, having a license of Absence from *his Diocesan*, but not as an *Adulterer*, or *Fornicator*, or *Incontinent*, or for fear of any Discovery as this *Complainant* maliciously insinuateth. For this *Respondent* had a Cure at *Delft* in *Holland*, and lived there publicly, being employed to Preach unto the *English* and *Scots* in a publick Church in *Delft* for most of the time he tarried there, and held correspondence with *Alban* this *Complainants* Son all the time, who from time to time sent Letters, and gave an account of his rents, and had a continual course of Letters from this *Respondent*. And there was no such thing as living incontinently with any woman, much less with the said *Mary Tomkins*. And the said *Mary Tomkins* had no Bastard Child born there, neither can any such thing be proved, nor was there any fame of any such thing, or any repute of a Bastard Child born there. But true it is that the said *Mary Tomkins* living there in *Delft* in good Reputation was delivered of a Daughter who was Baptized, and Named *Mary*, born on the 26th Day of *June* 1688. about nine years since. And of this child, this *Respondent* does confess, he is (as he verily believes) the true Father. And he humbly conceives it is a lawful and well born child

For that being deserted of this *Complainant*, his pretended Wife, above two full years before this child was born, It was lawful for him to joyn himself, unto another woman, as by all the Testimonies aforesaid it does appear. And what ever child he had at this time, was no wrong to her who had utterly forsaken his bed. And this child being but newly Conceived at his coming away out of *England*, there could be no such thing as she maliciously in her Libel suggests, ; that it was taken notice of, that the said *Mary Tomkins* was with child. Now true it is, that this *Respondent* was not married to the said *Mary Tomkins*, according to the customs of the Church of *England*, for reasons as aforesaid : And whereas many will be apt slanderously to charge this *Respondent* as one keeping a Concubine, or living in Concubinage with an unlawful woman : This *Respondent* humbly answers, that in a sense he is lawfully married to the said *Mary Tomkins*, and that his Children by her are lawfully born children, and no bastards.

Of a lawful Concubinage in a Case of Necessity; wherein lawful Marriage conveniently or possibly cannot be obtained.

ANd to this purpose he humbly conceives himself concerned to make it appear, according to *Gods, Holy Word*, and the *English customs*, and good Law of this Land, there is a sort of most lawful and necessary Concubinage, that in many cases cannot possibly be avoid. This first Wife this *Complainant* called *Martha Butler*, being never lawfully married to him this *Respondent* could not be his lawfully married wife ; and yet both of us having done our true endeavours to be lawful man and wife, it was no fault of ours that we were not so ; for as the time then reigned,
few

few were or could be lawfully married. But we were in a fair way to be lawfully married, and had been so, had not the mistake of the Minister marrying, and unhappy accidents prevented us. Wherefore having done what we could do, who shall blame us that we lived almost forty years together in *Concubinage*, and were never truly married. Until by the *Act of Indemnity* at the coming in of *King Charles the II.* our marriage, and a thousand more unlawful marriages, were all made good in Law as if they had been the most regular marriages all of them, that ever were made by a *Minister in holy Orders* according to all the rites and ceremonies required by the Laws and customs of the Land. Now all these thousands of marriages, which were made by the *Directory*, and by *Justices*, and by *Quakers*, and many by taking one anothers words, were all of them but meer *Concubinages*, and no more, but as if man and woman had gon to bed together, and begot children without any Ceremony at all. For our law calls all *Bastards* that are born out of marriage, and all *Directory*, and *Justice* marriages, were as much illegal, as those without any ceremony at all, and were all equally fellows in *Concubinage*, until the said *Act of Indemnity* set all strait, and made all good. Now by the said *Act of Indemnity* of the *XIIth of King Charles the II.* it is expressed that any the *Subjects of the said King*, or the *heirs or Executors of any of them*, shall not be sued vexed or inquieted by or in behalf of the *Kings, Majesty, his Heirs or Successors, in their bodies, goods, lands, or tenements, for any manner of matter, cause, contempt, misdeameaners, &c.* Or any other thing suffered done, or committed, before the said 24th of June 166c, against his late Majesty, or that now is, his Crown Dignity. *Prerogative, Laws, or Statutes; any Statute, Statutes, Laws, customs, or Usages heretofore had, made or used, to the contrary in any wise notwithstanding. And that all the said Subjects, &c. may plead this Act for their free pardon.* Now setting aside *Laws and Statues of this Realm*, according to holy writ, there is no more ceremony requird, but *consent on both parts, before Witnesses sufficient, and bedding together, according to Exod. 12, 26.* without any presence necessarily required of either *Magistrate or Priest.* And tho every one Man, was to marry but one woman, who was to be Lady or Dame of

of the Family, yet God did plainly allow of a *lawful Concubinage*, or additional wives for the bed, for *Issue sake*; the Issue whereof are no where termed Bastards, either in old or new Testament; but upon all occasions in case of heirs male wanting by the proper wife, the *son of Concubinage*, became heirs. Thus *Ismael* Son of *Abraham* by his maid servant should have been heir if *Isaac* had not been born of *Sarah* *Gen.* 17, 18. And thus *Rehobcam* Son of *Solonian* by *Naamah* a meer Concubine, was his Heir unto his Throne, for that he had no Son by his proper Wife: Yea tho Daughters, he had several. And thus *Jeftabab* Son of *Gilead* by a Stranger, or a meer Concubine, became the Prince of the People, before any of his brethren, Born of the lawful Wife, because of his Abilities above any of them. *Judg.* 11. 1, 2, and 11, which had he been a Bastard could not have been. For a Bastard might not enter into any office in the Church, to become so much as a Constable or a Churchwarden much leis a King or Judge, *Deut.* 23, 2. but was to remaine a slave equal to the *Gibeonites* a hewer of wood, and a drawer of water. And at this rate none were esteemed Bastards but children begotten in Adultery or Whordom, of another mans wife, or of a common Whore; and such could not inherit. Incest was a foul sin, and yet the Children Born of Incest did inherit, and were not reputed Bastards, as *Pharez* Son of *Judah* by his Son's Widow, and *Fanna* Son of *Joseph Arses* by his Nice: Both which were Heirs in the Genealogy of our Saviour, and therefore no Bastards. But the Pope made Bastards of such, which by God's Law are reputed well born. And from the Pope, our Statute Laws still keep up the practice: Declaring all childeren to be bastards, which are born out of marriage. So as Childeren begotten out of marriage, was a sin against the King's Laws and Statutes and yet no sin against God's Law. Now it hapned that betewen the year from *Janu.* 1. 1637 unto the 24 of *June* 1660. there were so many hundred thousand children born out of marriage, because of the true Laws of marriage put down, that there was no other remedy to heal so many disorders in marriages, by sinning against the King's Laws, but by an *Act of Indemnity*; and by that Act, allmanner of sins against the King's Laws, in case of deficient marriage, except some exceptions in

in that Act expressed, whereof this is none. being pardoned. All sorts of coming together, by any single man and single woman, and not disallowed by Gods Laws, and the children born of such a bedding together, are made as lawful to all intents and purposes, as if they had been married in all things according to the rites and ceremonies of the Church of England. And hence all manner of Concubinages between single persons during the time aforesaid were made good in Law, by a Statute-Law. And thus the marriage of this Respondent with this said Complainant, became a lawful marriage by Statute-Law, as well as by Gods Law. And so it was also of all other Concubinages of the same time, from 1637, unto June 1660. And the children of such a bed were lawful born children, and no bastards, but were and are to be taken, as the true and lawful Heirs unto their Fathers Dignities and Estates in as much as if they had been born of lawful marriage. And now the second marriage of this Respondent with the said Mary Tomkins, being a lawful marriage according to God's word, barr'd of the benefit of the King's Laws only, because of dangerous inconveniences in the way. And being in the same state as all the Concubinages in the years aforesaid, laments only the want of the same remedy. And being a lawful marriage before God, pleads for its self as a lawful and innocent concubinage, tho not a good marriage according to the King's Laws.

2^{ly}. This Respondent farther pleads, that tho the Statute-Law of this Realm seem to condemn this his deficiency of marriage; yet the customs of the Kingdom do fully and plainly allow of it. For first whereas it appears by the *Chronicles of Scotland* that Robert Stuart the next Heir unto David then King of Scotland, as his eldest Sisters Son, lived with Elizabeth the daughter of Sir Adam Moor, as his Concubine out of marriage, and had by her three sons, John, Robert and Alexander; and afterwards the said Elizabeth still living, he Married with Euphame the Daughter of the Earl of Rosse, by whom he had two Sons, called David, and Walter. And after that being Crown'd King, Euphame dy'd, and he married his old Concubine Elizabeth: And being old he called a Parliament of Lords Spiritual and Temporal, to advise him which son of right ought to inherit his

his Throne. And it was resolved for the eldest Son of the Concubine, before the sons of his married wife. For that she had been a true wife to him before God in all things, excepting the deficiency of the rites and ceremonies of marriage. This therefore was approv'd of by all the wisdom of the Realm to have been a lawful Concubinage. And inso-much as the Heirs of that Concubinage are without any gain-saying admitted also to inherit the Imperial Throne of this Realm; it is also become an allowed Custome in this Kingdome also, That the Heirs of a lawful Concubinage may inherit the Patrimony of their Parentage. Thus also in the case of *William of Normandy*, who was born out of marriage, who was admitted, and his Heirs after him, to enjoy the Imperial Throne of this Kingdom, and owned as a lawful King by all the Nobles and Bishops of this Realm. *Henry* the seventh also of this Kingdom was admitted and allowed in several Parliaments, as the lawful Heir of *John Duke of Lancaster*; altho' he was the Grand-child of *John Earl of Sommerfet*, the Son of the said *John Duke of Lancaster* by *Katherine Swinford* his Concubine, born out of marriage; and as I take it, in the Life time of *Constance* his wife: And the Heirs of these Concubinages do continue unto this Day. Now have Parliaments admitted of such things as these as lawful and good Successions; and shall they not be called the Custom of England: And if lawful Customs, then Custom pleads to be of kin unto a Law; yea, tho at the same time it seems to clash with Law: But we must distinguish between matters of Concubinage; for tho' some of them may justly by Law be Condemned, yet some other of them in the mean while ought to have a dispensation against the perils of the Law. And among others, this Case of the Respondent humbly begs a Reprieve, in asmuch as necessity for want of the Power of Continency requirs an honest company of some Bed-fellows; but it may not be an Whore, and cannot with safety be a married wife according to the Laws of this Land, for want of an Authoritative Sentence to acquaint him of his former marriage, which when time was could not be gained; and thus between three dangerous Rocks necessity hath invited or rather thrust him into a bed of Concubinage; which is unto him in all points as it were a lawful marriage.

But 3^{ly}. This Respondent having made two such Marriages

riages, and yet neither of them of choice as to the manner, but both of them of a sort of necessity, deficient of performance according to the good Laws of this Land, humble craves of the good Reader his patience, to hear out the justification of his Innocency in the last as well as in the first: And lest he may seem in the eyes of ignorant and scornful men more guilty of rashness and incontinence, than of honesty and innocency; he humbly prays it may be considered in the first place, How apt a thing it is that many innocent and holy doctrines may be generally cry'd down as gross Errors, which are quite otherwise? As for instance in the Case of *Priests Marriage*, which is a matter wherein the Church is now perfectly satisfied, that it is both an *Honourable* and a *truly holy practice*; and yet it cannot be forgotten, how it was cry'd down in our grand-fathers days as a most pernicious, Hellish, and an Abominable Sin. And as it was with *Priests Marriage*, I am of opinion we may find some other matters still spoken against, that may upon serious consideration be found as innocent and holy as that is at this day. And among other things I propose a lawful Concubinage, as in some cases it may be required: And to this purpose it is written in the New-Testament, *Heb. 13. 4. that Marriage is honourable in all, and the Bed undefiled: But Whoremongers and Adulterers God will Judge.* Hence it follows without dispute, That Marriage in its self is an honourable state; and that the *Bed undefiled is so too*, and that in all things as in the case of marriage: But then upon inquiry, whether in this Text, by the *Bed undefiled*, is to be understood the *self same thing* with the Married Bed, or some other Bed plainly different and distinct therefrom, is a matter disputable still. And now the Words, *Kai* [and] or *Ki*, as it is in the original, is a *particle copulative*, which couples words and sentences together; and these words and sentences ought properly in such a case of *coupling together* to be of a *diverse and distinct* signification; for that which is the *same thing in sense* with what went before, needs no bond of copulation, being naturally joined therewith: For in such a sense had this learned Author intended by these Words one and the same thing, he would have written saying, *Marriage (being) a Bed undefiled*, or (which is) or (if) a *Bed undefiled is honourable*; then had it been a plain case what he meant by his

words: But as the words run in the text, *Marriage (and) the Bed undefiled*. This *Bed undefiled* according to plain grammatical construction, must be aptly significant of some certain *Bed distinct* from the *Marriage Bed*; or at least the words must start a Riddle hard to be understood: 'Tis true indeed, that the word (and) is sometimes read as a Particle *Exegetical*; as in *Ephes. 1. 3.* it is written, *Blessed be God and the Father of our Lord Jesus Christ*; which Sentence by the same Author is written, *2 Cor. 1. 3. Blessed be God even the Father, &c.* In which places the words *God*, and *Father of Jesus Christ*, are plainly significant of the same Person, yet coupled together *exegetically* by the Particle (and) but that in this case, the word (and) couples not Persons, but *Relations* together; for what God is *in himself unto all the world*, is a distinct thing unto what he is *unto Christ alone*; and in this case the word (and) is used as it were not properly in its own natural sense, but is taken for the word (even) as the Author explains himself in another place, speaking to the same purpose; but in this case the words appear not in the same livery; for shall we read the words thus, *Marriage even the Bed undefiled* is honourable, yet still there will be a riddle in the case, as to the Authors meaning; for why did he make account that *Marriage could not be honourable*, unless it were a *Bed undefiled*? No, that could not be, for *Marriage of its self* is an honourable state in all cases and persons, whether it be Holy or Prophane, whether it be among *Jews, Christians, or Pagans*; and therefore there needs not these words, [*Even*] the *Bed undefiled*, or [*being*] or [*that is to say,*] the *Bed*, &c. And again, would we read the words thus; then would it follow that all *Marriages* are *even a Bed undefiled*, which is not so: For that there are many very *Prophane and unclean* *Marriages* made, whence follows therefore of necessity, that this learned and holy Author does in this place clearly treat of a *Bed undefiled*, as a *Bed plainly different and distinct* from the *Marriage Bed*, or of some *Bed out of Marriage*, that may be truly stiled a *lawful and undefiled Bed*. And as so he seems to comprehend all those *cases of deficient Marriages*, between the year 1637, and 1660, in the Act of Indemnity aforesaid, intimating that in those Cases where the lawful ceremonies of *Marriage* could not aptly be had; yet those beds being *honestly managed, and undefiled, were there-*
fore

fore beds in themselves *lawful and honourable*, if no such thing as the Act of Indemnity had come forth to confirm them: And thus by the same rule and reason, this Respondent pleads that his present bedding with the said *Mary Tomkins* is a *Bed undefiled*, and therefore lawful and honourable, even as the Marriage Bed, being made at a time when *lawful Marriage could not conveniently be had*; for he having taken into his bed an *honest woman* and *no whore*, and this without offence to God or to any man breathing, and not for satisfaction of *unclean Lust*, but purely and truly to *avoid Fornication*, and to procure of her body an *holy seed* to be educated in the nurture of the Lord, in godliness and honesty, and true Religion: And the Children he hath by her do witness as much.

But may not the true and proper Grammatical construction of the word be testimony sufficient of the true and proper meaning of the text, and of the holy Author thereon. Let us next examine the custom and practices of the persons concerned in the words, which must be a certain exposition what this Author meant by the *bed undefiled* he wrote of. Now the Author of this Epistle to the *Hebrews*, is commonly supposed to be *St. Paul*; some think it was rather *St. Luke*, and others say it was *St. Barnabas*: This Respondent is able to make appear that it was *St. Barnabas*; but these things need not here to be debated. That it was one of the three is mostly agreed, and who ever it was, before he was a *Christian Jew*; and the *Hebrews* unto whom the Epistle was directed were also *Christian Jews*, which things must unavoidably be allowed to be true; and if so, then this *bed undefiled* must be necessarily understood as it was commonly esteemed among the *Jews*; For had their customs and practices been reprobable, this holy Author would have corrected them; but as he styles this *bed undefiled*, as an honourable state, even in the case of *marriage*: so a *bed undefiled* according the use and custom of the *Jews* at the time of this Epistle written, is to be an infalliable testimony in what sense these words are to be understood; and to this purpose we are to enquire into the custom of the *Jews*, first *before*, and 2ly after *Christianity* bore date: Now *before Christianity* it plainly appears, that the *Jews* had their *Marriage beds*. And there was always allowed among the *ancient Hebrews* also a *bed of Concubinage*, which was also held to be in it self a *bed undefiled and honourable*, and a *lawful ex-*

from; and at this rate the Patriarch *Abraham*, a man without exception for holiness and honesty, had his married wife whose name was *Sarah*; and besides that wife he had his Concubines *Hagar* and *Katurah* in his wives life time, by both which he had issue, and that of a bed undefiled, and not at all tainted with the stains of *Adultery* or *Fornication*: For had not his son *Isaac* been born of *Sarah* his wife, his Son *Ismael* by his bond maid had been his true and lawful heir, *Gen. 17. 18.* Which could not have been had he been born a bastard, as now a days such a child is reputed to be: But God Almighty so fully attested the Legitimacy of *Ismael's* birth, by the blessing he gave him, as of a well born child, *v. 20.* Does God usually give his blessing to bastards, who are utterly barr'd thereof unto the tenth generation? *Deut. 23. 2.*

After the same manner also King *David* had *Michal* his married wife; and she dead, he married *Bathsheba* his second wife; and besides these wives he had several other women who were called side wives, of whom he had lawful issue. And yet these secondary and inferiour wives being none of them endowed were but meer Concubines; and yet those Concubines were so far from being reputed whores or unfaithful women, that God Almighty gave testimony to the contrary by styling them Concubines of God's own allowance, or proper gift, *2 Sam. 12. 8.* Does God patronise *Adultery* or *Fornication* by allowing of such a Concubinage to be a lawful and undefiled bed? Surely no; what God allowes of therefore is no Sin.

King *Solomon* had seven hundred wives, who were all kings daughters; and yet by them all had no male-child: For his true and lawful heir was *Rehoboam* his son, by *Naamah* an *Ammonite* his concubine, who was born before marriage and before he was king: And *Solomon* dead, this son of a concubine born before marriage, without contradiction, was accepted of by God and Man as *Solomon's* true lawful and proper heir, notwithstanding that he had daughters by his wife or wives, and had *Nathan* his royal brother, who or some of his issue were then living.

Hosea the prophet had also a married wife, whose name was *Gomer*, and she yet living, by a special command from God, this Prophet did yet love another woman whom he married not, but took her unto him for a term of years, months and days, and dwelt with her as his concubine, having agreed with her for

for the term, to be a *true wife* unto him at a certain price of reward: And yet this was certainly a *bed undefiled*, obtained by a *special appointment of the Lord*, *Hof. 3. 1, 2, 3, &c.* Whence follows that in the Church of the *Jews before Christ*, there was a custom and practice of an *honest sort of concubinage* allowed by *God's word*, as an *undefiled and honourable bed* which cannot by any means be denied; tho' some Divines of good reputation are not willing to allow these things as well done.

But after Christianity came in, and the *Hebrew church* became *Christian*, it remains yet to be debated whether this custom and practice continued also into Christ's time in full force and power as before, yea or not? Unto which question this Respondent says, he humbly conceives it does continue. For first he reckons that all lawful customes and practices once allowed of by *God's word* and *examples of holy Men*, are not to cease until countermanded, or otherwise ordered, repealed, or abrogated by as good authority of *God's word* and *good men*, as at first gave them a being in the Church. And now to testify that there never was any such repeal or abrogation of those ancient customs and practices allowed before Christianity; this testimony of the *Author to the Hebrews* is mine evidence: For the *bed undefiled and honourable* which he treats of, being certainly to be understood of the *ancient customs and practices* of the said *Hebrews*, unto whom he writes, which being no where in *God's word* limited, repealed, or abrogated, or so much as once spoken against; he styles at the instant time of his Epistle written to be a *bed undefiled and honourable*. True it is indeed that those *Hebrew customs* do proceed farther than to a bare *case of necessity*, which this Respondent is not concerned to justify or to meddle with, excepting only thus far, That if *ancient Concubinage* be justifiable at large, how much more is it clearly justifiable a *Concubinage* in a *case of necessity only*. And thus far this *Author to the Hebrews* does plainly justify, that an honest woman taken into bed purely and truly to avoid fornication, and for propagating of an *holy Seed, issue or offspring*, tho' out of marriage in a *case of necessity*, may be a *bed undefiled, lawful, virtuous and honourable*, and quit and clear of all *Adultery and Fornication*, notwithstanding any *papal decrees, Canon Laws or Statutes* of any realm to the contrary whatsoever; and such saith this Respondent is the true state of his case.

But

But yet to add still more light unto the sense of this holy *Author to the Hebrews*, this Respondent brings in the Evidence of the *sacred birth* of the ever blessed our Lord *Jesus Christ* for confirmation : Dareth any soul upon earth be so impudent as to defame the *conception* and *birth* of that most holy *God Man*, who was born without Sin, by saying that they were stained with *Fornication* or *Incontinency*, because performed *out of marriage*; and yet how shall any Man who stubbornly persists to deny all *lawful Concubinage*, make out such his sentiments without reflecting upon our *Saviours conception* and *birth*? will such a Man think to be excused by alleging that this was an *extraordinary work of God*? This answer will stain his lips more and more instead of wiping his Mouth; for does God Almighty ever do any thing either ordinarily or extraordinarily which he forbids us to do? Should God himself do that thing which in us is called *Adultery* or *Fornication*, or any other Sin, he would cease to be God; for *Fornication* in its self is an unclean thing, and *Adultery* worse; and should God do one or the other, it would be doing an unclean thing, and to justify that God can do such a thing is *blasphemy*; and to say that a *Bed out of marriage* cannot be an *undefiled, lawful and honourable bed* is almost as bad : Let therefore those wife and good men who have inconsiderately condemned the ancient holy patriarchs for their practices of *Concubinage*, as guilty of sins which God winked at in those days, bethink themselves anew, and perhaps they may be of another mind. Conclude we therefore that what God Almighty hath caused to come to pass, was in it self an honourable, lawfull and holy thing; and what God accounts in its self to be good, neither *Pope* nor *Parliament* can make evil; what God hath proclaimed *lawful and legitimate*, it's past man's power and authority to make illegitimate or a *Bastard seed*.

But this Respondent stops not here, for there is another material case, testified by our *Saviour* himself in the new testament, of a *bed undefiled out of marriage*; and this was the case of the woman of Samaria, (*Joh*, 4, 18, &c.) Of whom our *Saviour* well knowing *that she lived as a wife with a man who was not her husband*, and therefore in plain terms was *his Concubine*; yet unto this woman in the very state, without any condition made in the case of discontinuing her course of life, and without any the least reproof for the manner of life she

she lived: Our Saviour freely rendered her the water of life, or the thing signified by baptisme, saying unto her positively, that had she known who he was she would have asked, and he would have given her of the water of life; and after this he did tell her who and what he was; and she hearing did believe what he said, and did ask for the water of life; and by consequence she had it: And our Saviour had call her husband, whose Concubine she was, and she left her water-pot and went to call him; and as it shall seem she brought him and many more neighbours with him; and he and thy were all or most of them partakers of the same blessing, as by the effect appears. Now saith this Respondent, had this state of Concubinage been an unclean thing, or an incontinent course of Life, as now a days it is reputed; this Concubine and her man that kept her, could not aptly have believed in Christ, and been partakers of the holy Ghost; as it appears they did, and were a Concubine, and yet endued with the holy Ghost; a Concubine keeper and yet sent for to partake of the water of Life, and yet neither he nor she at all reproved for the course of life they lived in, saying, *Sin no more*, As our Saviour in sinful cases was always wont to say (as *Joh. 5. 14.* and *Ch. 8. 11.*) Say we then, and let all candid hearted good men say with us, that the state of Concubinage in some cases at least, is an honest, a believing, and a saving state of life.

And now having shewn those two sorts of Beds which our *Author* to the Hebrews commends as Honourable; Next I come to treat of those he teaches to shun as damnable, and those are *Whormongers*, and *Adulterers*, whom God will Judge. The *Whoremonger* is such a wretch, who tho allowed to Marry, or to keep his Concubine, that is a Woman proper to himself, provided he do not multiply Concubines, nor keep any woman unlawfully compassed unto any man's wrong, or to that womans wrong, and useth her not meerly for his lust, in wantonness, or uncleanness, but out of a pure desire of an holy seed by her. Yet not contented with that lawful liberty of God allowed, chooseth rather to spend the holy seed of mankind upon common women, who sell their bodies to the use of every commer: And thus exposeth his seed to be murdered in the body, as whores use to do by their conceptions, or to become a *Bastard Brood*, of whom no man knows the true Father. And therefore the

Mother.

Mother of such is to be burned, but the Father God will Judge. This is a crying sin which God hates. And yet at *Rome*, and in some *Reformed States*, such whores are allowed and encouraged, while an honest *Concubinage* is esteemed the worst of whoredom. The second foul crime is *Adultery*, wherein a wicked man conceives more pleasure in another man's wife, then in an honest woman. Together with this sin are companions, the sin of *Sodomy* or *uncleanness with mankind*, the sin of *Buggery* or *uncleanness with Beasts*, the sin of *Incest*, the sin of lying with a woman during her uncleanness, and of giving seed to *Moloch*. *Levit.* 18. All these are great abominations, which defile the Land.

And now having done with the testimony of holy writ, come we lastly to the practise of the *Primitive times*, next after the *Apostolical Age*: wherein we find that it was not, as it is now, holden in those days such an heinous crime, to have children born out of marriage, especially in case wherein marriage could not aptly be had. The first and most Antient *Laws* or *Canons* we have of those days are those stiled the *Canons of the Apostles*. Wherein it is noted that if a man go in unto a woman who is a virgin, and do in any wise deflower her, Be she poor or rich, that man is either to make her his wife, or else he is to have no wife so long as she Lives. This was the 66th of those *Canons*: And it was confirmed for Law at the 6th general Council holden at *Constantinople*. Now this Canon agrees nearly with the sence of holy Writ. In *Exod.* 21. 16, 17. And shewes that in those times marriages were ordered mostly according to holy Writ: And *Concubinage* was in use as in the *Antient Jewish Church*. For about the Year of Christ 300, *Constantius Chlorus* had to wife *Helena*, the Mother of *Constantine the Great*, and in her Lifetime took into his bed *Theodora* the daughter of *Maximian*, by whom he had Sons called *Constantius* and *Anniballinus*, and *Constantia* his daughter. Now these three according to the *Popes Laws*, and our present *Laws*, were esteemed base born: But in those days the Father of the Church received them becoming *Christians*, into places of Authority, never once scrupling that they were base born. *Constantine* also himself, the first Christian Emperour, had to wife *Minervina*, his lawful wife, by whom he had issue *Crispus Caesar* his first born son, con-

and also by *Fausta* his Concubine he had his sons *Constantine*, *Constantinus*, and *Constans*; which all three lived to be *Christian Emperours*, and yet were never any of them once questioned by any of the *Bishops of those days*, for base born or bastard Children. Also *Valentinian*, a very commendable and orthodox Christian Emperour, had *Severa* his lawful wife by whom he had issue, *Gratianus* his eldest Son; and *Justina* his concubine, by whom he had issue, *Valentinian* his younger Son. Him *Gratinus* succeeding dyed without issue, and *Valentinian* son of the concubine was called unto the throne, and was crowned by St. *Ambrosius*, the Godly and good Bishop of *Millaine*. And yet neither St. *Ambrose*, nor St. *Augustine*, nor any of the Bishops of that age did ever question the Emperour *Valentinian* the Father for keeping a concubine in his wives life time, nor *Valentinian* the Son for being base born, and therefore unfit to reign, because born a bastard. For had the Bishop once questioned the mater. *Theodosius* the great, then reigning at *Constantinople*, could, and would have put him down, upon a word speaking of St. *Ambrose*.

True it is indeed, that in the heat of zeal by good men in the Primitive times, Virginity was buoyed up a great rate; in pursuit of which, many holy Church customs became neglected, and in an heat were decryed. And hence *Priests marriage* began to be in disgrace, and at length was utterly thrust out; and hence concubinage also was spoken against. But this Respondent has not read of any process against concubinage as a criminal thing, until the *Papacy of Rome* being crowned heads, and became rampant, began to tyrannise at list. And the first that this Respondent found upon record, was the case of *Lotharius* king of *North-France*, who having a wife, kept a concubine in the IX Century, and was first admonished, and then excommunicated by *Pope Hadrian* the II. unto the ruin of that poor Prince. And since this beginning, the proud Popes have made *Decrees* and *Canons* as best served their own avarice, even as they listed; and darkened the brightness of the holy Gospel, out of all Mens sight in a manner; insomuch as in the days of *Henry* the VIII. the King, Lords, and Commons assembled in Parliament unanimously complained of the Popish encroachments in the case of marriage, brought in for filthy lucre sake, which

the Church-men reapt thereby; by mean whereof so many ways were invented for bastarding of children, that without a license of marriage from *Rome*, it was a difficult thing for a person of any quality to have a lawful born Heir. Whence in the XXXII year of *Henry VIII. Chap. 38.* a statute past, that all marriages shall be lawful which are not in Holy-writ forbidden: And in that statute the *Bedding of Women* was stilled the Essence of Consummation of marriages: See we then whence came up this custom of making base born children contrary to God's word; not out of Holy-writ, nor lawful Church-canons, but out of the dregs and corrupt laws of the worst of Popish times. And yet since that statute, we are not yet come to rights, nor cleared enough of those *old popish Corruptions*.

And this Respondent humbly conceives, with submission to the most Pious and Learned Statel-men of those Realms that were matters well weighed, the doctrine of a Reformed Concubinage, as it was used of old by the holy and good Patriarch's, might be found to be of sacred and holy use, to prevent the ruin of Royal, Noble, and Generous Families, many of which have formerly Ship-wrackt for want of a convenient remedy; and besides, it would prove an honest help to destroy those foul and crying sins of *Whoredom* and *Adultery*, which ruins Kingdoms as well as Families. Had it not been for this help of *Concubinage*, King *Solomon* had utterly failed of that Royal race, whence our Lord and blessed Saviour *Jesus Christ* lineally descended. Consider we how many kingdoms have been utterly ruined for want of an honest *Concubinage* to supply the defects of barren and unhappy marriages. Had *Alexander Scot* used a Concubine, an Heir of his body might have prevented those dreadful Wars which followed between the Families of *Bruce* and *Baylis* for compassing that Crown. And had *Richard the II^d of England* been allowed an heir by a Concubine, the Wars of *York* and *Lancaster* had never harrassed this kingdom as they did; which at last was not ended but by a Son sprung from a bed of Concubinage: But happy was that Concubinage of *Robert the II^d of Scotland*, which advised to by a Parliament of that nation. gave birth to that Family of the *Stuarts*, which have made both *England* and *Scotland* exceeding happy. And being grafted into the Family of the *Welch Ter*
There

thers of the Royal blood of England, another Family sprung from a bed of Concubinage, are to this day reigning over both kingdoms. Which if so, let no Man by corrupt and unlawful comfoms go about to stain the Legitimacy of such a race of Princes, as both England and Scotland have just cause to remember, with Praise and Thanksgiving to God, and espécially for Charles the first of blessed and never dying memory, the gracious gift of God, for whose blessed sake good things may justly be expected in time, both unto his royal race, and these his kingdoms. And thus much may serve in vindication of this Respondent, or bedding with Mary Tomkins, and in answer to her II^d. Article. The third faith.

III. Item. That the said John Butler after having lived with the said Mary Tomkins in the foul crime of Adultery, or Incontinency in Holland, or some other part beyond the Seas, as in the present Article is set forth, he the said John Butler with the said Mary Tomkins, returned into England, and bought or took a House at Hammersmith, in the county of Mid^s. where they continued to live in an Adulterous, Incontinent manner for many years together; and do still live and cohabit together as man and wife, and she the said Mary hath had four other base children born of her body, and begotten by the said John Butler one of which children is since dead, but the other three are still living, and are called by the name of John, George, and Butler, and for as and the natural children of the said Mary Tomkins, begotten by the said John Butler, they were and are commonly accounted, reputed and taken, and therefore as also of the said John Butler and Mary Tomkins, there living in Adulterous and Incontinent manner together in Hammersmith aforesaid, there was and is a publick and notorious ponit tamen de quolibet alio temperis spa. & numero liberor. & ponit ut supra.

Such is the third Article of her Label, which is forestalled by the Answer to the second, saving that this Respondent faith, he hath lived sometimes in Hammersmith, in good reputation with all good People in the Parish; who he supposes cannot give credit to the Lies and Scandals of this Article: And that the said Mary Tomkins doth cohabit with him there in good Reputation, by the name of Butler.

IV. Item, That the said John Butler hath lately, to wit. with-
last past turned the said Martha Butler his wife
out

out of doors, and left her destitute of necessaries, whereby to support and maintain her self. Hocq; fuit & est verum, &c. & ponit ut supra.

Such is her IV Article; unto which this Respondent saith, it is a meer forgery of Lies, he having no such wife as *Martha Butler*? once he had such a Woman his wife, whom he never turn'd out of doors; but she lived with him while she would, and left him of her self, but lived upon his estate, eat and drank at his charge, and lived upon his means, and does so to this day, and was never denied support and maintenance, would she come where 'tis to be had.

V. Item. *That the said John Butler hath an estate to the value of 200 l. or at least 185 l. per ann.* Hocq;, &c. ponit tamen, &c. ponit ut supra.

To which this Respondent answers, that once he had such an estate, but by the ill dealings of the said Complainant *Martha*, and her sons by confederacy with *Nathaniel Halber*, the mortgagee he is deprived at present of his whole estate by illegal and evil arts, and this Complainant and her Sons are in possession thereof.

VI. Item. *Quod præfat. Johannes Butler fuit & est paroch. de Hammersmith in Com. Midd. ac ratione literarum requisitoria, ab Ordinario loci prius obtent. jurisdict. hujus curiæ Notor. subditus & subject, & ponit ut supra.*

Hic Respondens de his nil intelligit.

VII. Item. *Quod de & super præmissis, &c.*

Item. *Quod præmissa, &c.*

Negat Respondens.

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